

Calendar No. 509

105TH CONGRESS
2D SESSION**S. 442****[Report No. 105–184]****[Report No. 105–276]**

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES**MARCH 13, 1997**

Mr. WYDEN (for himself, Mr. KERRY, Mr. BURNS, Mr. MCCAIN, Mr. SHELBY, Mrs. MURRAY, Mr. ASHCROFT, Mr. FAIRCLOTH, Mr. LEAHY, Mrs. BOXER, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 5, 1998

Reported by Mr. MCCAIN, with an amendment

[Strike all after the enacting clause and insert the part printed in italic]

JULY 21, 1998

Ordered referred to the Committee on Finance until the close of business on
July 30, 1998

JULY 30, 1998

Reported by Mr. ROTH, with an amendment

[Omit the part in boldface brackets and insert the part printed in bold italic]

A BILL

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Internet Tax Freedom
 5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) As a massive global network spanning not
 9 only State but international borders, the Internet is
 10 inherently a matter of interstate and foreign com-
 11 merce within the jurisdiction of the United States
 12 Congress under Article I, Section 8 of the United
 13 States Constitution.

14 (2) Even within the United States, the Internet
 15 does not respect State lines and operates independ-
 16 ently of State boundaries. Addresses on the Internet
 17 are designed to be geographically indifferent. Inter-

1 net transmissions are insensitive to physical distance
2 and can have multiple geographical addresses.

3 ~~(3) Because transmissions over the Internet are~~
4 ~~made through packet-switching it is impossible to~~
5 ~~determine with any degree of certainty the precise~~
6 ~~geographic route or endpoints of specific Internet~~
7 ~~transmissions and infeasible to separate intrastate~~
8 ~~from interstate, and domestic from foreign, Internet~~
9 ~~transmissions.~~

10 ~~(4) Inconsistent and inadministrable taxes im-~~
11 ~~posed on Internet activity by State and local govern-~~
12 ~~ments threaten not only to subject consumers, busi-~~
13 ~~nesses, and other users engaged in interstate and~~
14 ~~foreign commerce to multiple, confusing, and bur-~~
15 ~~densome taxation, but also to restrict the growth~~
16 ~~and continued technological maturation of the Inter-~~
17 ~~net itself, and to call into question the continued via-~~
18 ~~bility of this dynamic medium.~~

19 ~~(5) Because the tax laws and regulations of so~~
20 ~~many jurisdictions were established long before the~~
21 ~~Internet or interactive computer services, their appli-~~
22 ~~cation to this new medium in unintended and unpre-~~
23 ~~dictable ways threatens every Internet user, access~~
24 ~~provider, vendor, and interactive computer service~~
25 ~~provider.~~

1 (6) The electronic marketplace of services,
 2 products, and ideas available through the Internet or
 3 interactive computer services can be especially bene-
 4 ficial to senior citizens, the physically challenged,
 5 citizens in rural areas, and small businesses. It also
 6 offers a variety of uses and benefits for educational
 7 institutions and charitable organizations.

8 (7) Consumers, businesses, and others engaging
 9 in interstate and foreign commerce through the
 10 Internet or interactive computer services could be-
 11 come subject to more than 30,000 separate taxing
 12 jurisdictions in the United States alone.

13 (8) The consistent and coherent national policy
 14 regarding taxation of Internet activity, and the con-
 15 comitant uniformity, simplicity, and fairness that is
 16 needed to avoid burdening this evolving form of
 17 interstate and foreign commerce can best be
 18 achieved by the United States exercising its author-
 19 ity under Article I, Section 8, Clause 3 of the United
 20 States Constitution.

21 **SEC. 3. MORATORIUM ON IMPOSITION OF TAXES ON INTER-**
 22 **NET OR INTERACTIVE COMPUTER SERVICES.**

23 (a) MORATORIUM.—Except as otherwise provided in
 24 this section, no State or political subdivision thereof may

1 impose, assess, or attempt to collect a tax directly or indi-
 2 rectly on—

3 ~~(1) the Internet or interactive computer serv-~~
 4 ~~ices; or~~

5 ~~(2) the use of the Internet or interactive com-~~
 6 ~~puter services.~~

7 ~~(b) PRESERVATION OF STATE AND LOCAL TAXING~~
 8 ~~AUTHORITY.—Subsection (a)—~~

9 ~~(1) does not apply to taxes imposed on or meas-~~
 10 ~~ured by net income derived from the Internet or~~
 11 ~~interactive computer services;~~

12 ~~(2) does not apply to fairly apportioned busi-~~
 13 ~~ness license taxes applied to businesses having a~~
 14 ~~business location in the taxing jurisdiction; and~~

15 ~~(3) does not affect a State or political subdivi-~~
 16 ~~sion thereof's authority to impose a sales or use tax~~
 17 ~~on sales or other transactions effected by use of the~~
 18 ~~Internet or interactive computer services if—~~

19 ~~(A) the tax is the same as the tax gen-~~
 20 ~~erally imposed and collected by that State or~~
 21 ~~political subdivision thereof on interstate sales~~
 22 ~~or transactions effected by mail order, tele-~~
 23 ~~phone, or other remote means within its taxing~~
 24 ~~jurisdiction; and~~

(B) the obligation to collect the tax from sales or other transactions effected by use of the Internet or interactive computer services is imposed on the same person or entity as in the case of sales or transactions effected by mail order, telephone, or other remote means.

SEC. 4. ADMINISTRATION POLICY RECOMMENDATIONS TO CONGRESS.

(a) CONSULTATIVE GROUP.—The Secretaries of the Treasury, Commerce, and State, in consultation with appropriate committees of the Congress, consumer and business groups, States and political subdivisions thereof, and other appropriate groups, shall—

(1) undertake an examination of United States and international taxation of the Internet and interactive computer services, as well as commerce conducted thereon; and

(2) jointly submit appropriate policy recommendations concerning United States domestic and foreign policies toward taxation of the Internet and interactive computer services, if any, to the President within 18 months after the date of enactment of this Act.

(b) PRESIDENT.—Not later than 2 years after the date of enactment of this Act, the President shall transmit

1 to the appropriate committees of Congress policy rec-
 2 ommendations on the taxation of sales and other trans-
 3 actions effected on the Internet or through interactive
 4 computer services.

5 (c) RECOMMENDATIONS TO BE CONSISTENT WITH
 6 TELECOMMUNICATIONS ACT OF 1996 POLICY STATE-
 7 MENT.—The Secretaries and the President shall take care
 8 to ensure that any such policy recommendations are fully
 9 consistent with the policy set forth in paragraphs (1) and
 10 (2) of section 230(b) of the Communications Act of 1934
 11 (47 U.S.C. 230(b)).

12 **SEC. 5. DECLARATION THAT THE INTERNET BE FREE OF**
 13 **FOREIGN TARIFFS, TRADE BARRIERS, AND**
 14 **OTHER RESTRICTIONS.**

15 It is the sense of the Congress that the President
 16 should seek bilateral and multilateral agreements through
 17 the World Trade Organization, the Organization for Eco-
 18 nomic Cooperation and Development, the Asia Pacific
 19 Economic Cooperation Council, or other appropriate inter-
 20 national fora to establish that activity on the Internet and
 21 interactive computer services is free from tariff and tax-
 22 ation.

23 **SEC. 6. DEFINITIONS.**

24 For purposes of this Act—

1 ~~(1) INTERNET; INTERACTIVE COMPUTER SERV-~~
 2 ~~ICE.—The terms “Internet” and “interactive com-~~
 3 ~~puter service” have the meaning given such terms by~~
 4 ~~paragraphs (1) and (2), respectively, of section~~
 5 ~~230(e) of the Communications Act of 1934 (47~~
 6 ~~U.S.C. 230(e)).~~

7 ~~(2) TAX.—The term “tax” includes any tax, li-~~
 8 ~~cence, or fee that is imposed by any governmental~~
 9 ~~entity, and includes the imposition on the seller of~~
 10 ~~an obligation to collect and remit a tax imposed on~~
 11 ~~the buyer.~~

12 **[SECTION 1. SHORT TITLE.]**

13 **[***This Act may be cited as the “Internet Tax Freedom*
 14 ~~Act”.~~**]**

15 **[SEC. 2. FINDINGS.]**

16 **[***The Congress finds the following:*

17 **[***(1) As a massive global network spanning not*
 18 ~~only State but international borders, the Internet and~~
 19 ~~the related provision of online services and Internet~~
 20 ~~access service are inherently a matter of interstate~~
 21 ~~and foreign commerce within the jurisdiction of the~~
 22 ~~United States Congress under Article I, section 8,~~
 23 ~~clause 3 of the United States Constitution.~~**]**

24 **[***(2) Even within the United States, the Internet*
 25 ~~does not respect State lines and operates independ-~~
 26 ~~ently of State boundaries.~~**]**

1 *ently of State boundaries. Addresses on the Internet*
 2 *are designed to be geographically indifferent. Internet*
 3 *transmissions are insensitive to physical distance and*
 4 *can have multiple geographical addresses.*

5 【(3) Because transmissions over the Internet
 6 are made using computer protocols, in particular the
 7 Transmission Control Protocol / Internet Protocol,
 8 that utilize packet-switching technology it is impos-
 9 sible to determine in advance the precise geographic
 10 route individual Internet transmissions will travel
 11 over, and it is therefore infeasible to separate domes-
 12 tic intrastate Internet transmissions from interstate
 13 and foreign Internet transmissions.

14 【(4) *Consumers, businesses, and others engaging*
 15 *in interstate and foreign commerce through online*
 16 *services and Internet access service could become sub-*
 17 *ject to more than 30,000 separate taxing jurisdictions*
 18 *in the United States alone.*

19 【(5) *Inconsistent and inadministerable taxes im-*
 20 *posed on online services and Internet access service by*
 21 *State and local governments threaten to—*

22 【(A) *subject consumers, businesses, and*
 23 *other users engaged in interstate and foreign*
 24 *commerce to multiple, confusing, and burden-*
 25 *some taxation,*

1 【(B) *restrict the growth and continued tech-*
2 *nological maturation of the Internet itself, and*

3 【(C) *call into question the continued viabil-*
4 *ity of this dynamic medium.*

5 【(6) *Because the tax laws and regulations of so*
6 *many jurisdictions were established long before the*
7 *advent of the Internet, online services, and Internet*
8 *access service, their application to this new medium*
9 *and services in unintended and unpredictable ways*
10 *could prove to be an unacceptable burden on the*
11 *interstate and foreign commerce of the Nation.*

12 【(7) *The electronic marketplace of services, prod-*
13 *ucts, and ideas available through the Internet can be*
14 *especially beneficial to senior citizens, the physically*
15 *challenged, citizens in rural areas, and small busi-*
16 *nesses. It also offers a variety of uses and benefits for*
17 *educational institutions and charitable organizations.*

18 【(8) *A consistent and coherent national policy*
19 *regarding taxation of online services, Internet access*
20 *service, and communications and transactions using*
21 *the Internet, and the concomitant uniformity, sim-*
22 *plicity, and fairness that is needed to avoid burden-*
23 *ing this evolving form of interstate and foreign com-*
24 *merce, can best be achieved by the United States exer-*

1 *cising its authority under Article I, section 8, clause*
 2 *3 of the United States Constitution.*

3 **[SEC. 3. MORATORIUM ON IMPOSITION OF TAXES ON THE**
 4 **INTERNET, ONLINE SERVICES, OR INTERNET**
 5 **ACCESS SERVICE.**

6 **[(a) MORATORIUM.—***Except as otherwise provided in*
 7 *this Act, prior to January 1, 2004, no State or political*
 8 *subdivision thereof may impose, assess, or attempt to collect*
 9 *any tax on—*

10 **[(1) communications or transactions using the**
 11 *Internet; and*

12 **[(2) online services or Internet access service.**

13 **[(b) PRESERVATION OF STATE AND LOCAL TAXING**
 14 *AUTHORITY.—Subsection (a) shall not—*

15 **[(1) affect the authority of a State, or a political**
 16 *subdivision thereof, to impose a sales, use, or other*
 17 *transaction tax on online services, Internet access*
 18 *service, or communications or transactions using the*
 19 *Internet if—*

20 **[(A) the tax (including the rate at which it**
 21 *is imposed) is the same as the tax generally im-*
 22 *posed and collected by that State or political*
 23 *subdivision thereof in the case of similar sales,*
 24 *use, or transactions not using the Internet, on-*
 25 *line services, or Internet access service; and*

1 **[(B)** *the obligation to collect or pay the tax*
2 *from sales or other transactions using the Inter-*
3 *net, online services, or Internet access service is*
4 *imposed on the same person or entity as in the*
5 *case of similar sales, use, or transactions not*
6 *using the Internet, online services, or Internet*
7 *access service;*

8 **[(2)** *apply to taxes imposed on or measured by*
9 *gross or net income derived from online services,*
10 *Internet access service, or communications or trans-*
11 *actions using the Internet, or on value added, net*
12 *worth, or capital stock;*

13 **[(3)** *apply to fairly apportioned business license*
14 *taxes;*

15 **[(4)** *apply to taxes paid by a provider or user*
16 *of online services or Internet access service as a con-*
17 *sumer of goods and services not otherwise excluded*
18 *from taxation pursuant to this Act;*

19 **[(5)** *apply to property taxes imposed or assessed*
20 *on property owned or leased by a provider or user of*
21 *online services or Internet access service;*

22 **[(6)** *apply to taxes imposed on or collected by a*
23 *common carrier, as defined in section 3 of the Com-*
24 *munications Act of 1934 (47 U.S.C. 153), acting in*
25 *its capacity as a common carrier;*

1 【(7) *apply to taxes imposed on or collected by a*
 2 *provider of telecommunications service, as that term*
 3 *is defined in section 3 of the Communications Act of*
 4 *1934 (47 U.S.C. 153); or*

5 【(8) *apply to franchise fees imposed by a State*
 6 *or local franchising authority, pursuant to sections*
 7 *622 or 653 of the Communications Act of 1934 (47*
 8 *U.S.C. 622 or 573), for the provision of cable services,*
 9 *as those terms are defined by such Act.*

10 **【SEC. 4. ADMINISTRATION POLICY RECOMMENDATIONS TO**
 11 **CONGRESS.**

12 【(a) *CONSULTATIVE GROUP.—The Secretaries of the*
 13 *Treasury, Commerce, and State, in consultation with ap-*
 14 *propriate committees of the Congress, the National Tax As-*
 15 *sociation-sponsored Joint Communications and Electronic*
 16 *Commerce Tax Project and the National Conference of Com-*
 17 *missioners of Uniform State Laws, consumer and business*
 18 *groups, States and political subdivisions thereof, and other*
 19 *appropriate groups, shall—*

20 【(1) *undertake an examination of United States*
 21 *domestic and international taxation of—*

22 【(A) *communications and transactions*
 23 *using the Internet,*

24 【(B) *online services and Internet access*
 25 *service, and*

1 [(C) *the telecommunications infrastructure*
2 *used by the Internet, online services, and Inter-*
3 *net access service;*

4 [(2) *consider any specific proposals made by the*
5 *Joint Communications and Electronic Commerce Tax*
6 *Project and the National Conference of Commissioners*
7 *of Uniform State Laws concerning appropriate pa-*
8 *rameters for taxation by States, and political subdivi-*
9 *sions thereof, of matters described in paragraph (1);*
10 *and*

11 [(3) *jointly submit appropriate policy rec-*
12 *ommendations concerning United States domestic and*
13 *foreign policies toward taxation of online services,*
14 *Internet access service, and communications and*
15 *transactions using the Internet, if any, to the Presi-*
16 *dent within 18 months after the date of enactment of*
17 *this Act.*

18 [(b) *PRESIDENT.—Not later than 2 years after the*
19 *date of enactment of this Act, the President shall, to the*
20 *extent and in the form the President deems appropriate,*
21 *transmit to the appropriate committees of Congress policy*
22 *recommendations on taxation of online services, Internet*
23 *access service, and communications and transactions using*
24 *the Internet.*

1 **[SEC. 5. DECLARATION THAT THE INTERNET SHOULD BE**
2 **FREE OF FOREIGN TARIFFS, TRADE BAR-**
3 **RIERS, AND OTHER RESTRICTIONS.**

4 *【It is the sense of the Congress that the President*
5 *should seek bilateral and multilateral agreements through*
6 *the World Trade Organization, the Organization for Eco-*
7 *nomie Cooperation and Development, the Asia Pacific Eco-*
8 *nomie Cooperation Council, and other appropriate inter-*
9 *national fora to establish that commercial transactions*
10 *using the Internet are free from tariff and taxation.*

11 **[SEC. 6. DEFINITIONS.**

12 *【For the purposes of this Act—*

13 *【(1) INTERNET.—The term “Internet” means*
14 *collectively the myriad of computer and telecommuni-*
15 *cations facilities, including equipment and operating*
16 *software, which comprise the interconnected world-*
17 *wide network of networks that employ the Trans-*
18 *mission Control Protocol / Internet Protocol, or any*
19 *predecessor or successor protocols to such protocol, to*
20 *communicate information of all kinds by wire or*
21 *radio.*

22 *【(2) ONLINE SERVICES.—The term “online serv-*
23 *ices” means the offering or provision of information,*
24 *information processing, and products or services to a*
25 *user as part of a package of services that are com-*

1 *bined with Internet access service and offered to the*
 2 *user for a single price.*

3 **[(3) INTERNET ACCESS SERVICE.—***The term*
 4 *“Internet access service” means the offering or provi-*
 5 *sion of the storage, computer processing, and trans-*
 6 *mission of information that enables the user to make*
 7 *use of resources found via the Internet.*

8 **[(4) TAX—***The term “tax” includes any charge*
 9 *imposed by legislative authority to raise revenue for*
 10 *the needs of the public, as well as any license or fee*
 11 *that is imposed by any governmental entity. Such*
 12 *term also includes the imposition on the seller of an*
 13 *obligation to collect and remit to a governmental en-*
 14 *tity any charge (as defined in the preceding sentence),*
 15 *license, or fee imposed on the buyer by a govern-*
 16 *mental entity.]*

17 **SECTION 1. SHORT TITLE.**

18 ***This Act may be cited as the “Internet Tax***
 19 ***Freedom Act”.***

20 **TITLE I—MORATORIUM ON**
 21 **CERTAIN TAXES**

22 **SEC. 101. MORATORIUM.**

23 **(a) MORATORIUM.—***No State or political*
 24 *subdivision thereof shall impose any of the fol-*
 25 *lowing taxes on transactions occurring during*

1 *the period beginning on July 29, 1998, and*
 2 *ending 2 years after the date of the enactment*
 3 *of this Act:*

4 (1) *Taxes on Internet access.*

5 (2) *Bit taxes.*

6 (3) *Multiple or discriminatory taxes*
 7 *on electronic commerce.*

8 (b) *APPLICATION OF MORATORIUM.—Sub-*
 9 *section (a) shall not apply with respect to the*
 10 *provision of Internet access that is offered for*
 11 *sale as part of a package of services that in-*
 12 *cludes services other than Internet access, un-*
 13 *less the service provider separately states that*
 14 *portion of the billing that applies to such serv-*
 15 *ices on the user’s bill.*

16 *SEC. 102. ADVISORY COMMISSION ON ELECTRONIC COM-*
 17 *MERCE.*

18 (a) *ESTABLISHMENT OF COMMISSION.—There*
 19 *is established a commission to be known as the*
 20 *Advisory Commission on Electronic Commerce*
 21 *(in this title referred to as the “Commission”).*
 22 *The Commission shall—*

23 (1) *be composed of 16 members ap-*
 24 *pointed in accordance with subsection (b),*
 25 *including the chairperson who shall be*

1 *selected by the members of the Commis-*
2 *sion from among themselves; and*

3 *(2) conduct its business in accordance*
4 *with the provisions of this title.*

5 ***(b) MEMBERSHIP.—***

6 ***(1) IN GENERAL.—The Commissioners***
7 ***shall serve for the life of the Commission.***
8 ***The membership of the Commission shall***
9 ***be as follows:***

10 ***(A) Four representatives from the***
11 ***Federal Government comprised of the***
12 ***Secretary of Commerce, the Secretary***
13 ***of State, the Secretary of the Treasury,***
14 ***and the United States Trade Rep-***
15 ***resentative, or their respective rep-***
16 ***resentatives.***

17 ***(B) Six representatives from State***
18 ***and local governments comprised of—***

19 ***(i) two representatives ap-***
20 ***pointed by the Majority Leader of***
21 ***the Senate;***

22 ***(ii) one representative ap-***
23 ***pointed by the Minority Leader of***
24 ***the Senate;***

1 (iii) *two representatives ap-*
2 *pointed by the Speaker of the*
3 *House of Representatives; and*

4 (iv) *one representative ap-*
5 *pointed by the Minority Leader of*
6 *the House of Representatives.*

7 (C) *Six representatives of the elec-*
8 *tronic industry and consumer groups*
9 *comprised of—*

10 (i) *two representatives ap-*
11 *pointed by the Majority Leader of*
12 *the Senate;*

13 (ii) *one representative ap-*
14 *pointed by the Minority Leader of*
15 *the Senate;*

16 (iii) *two representatives ap-*
17 *pointed by the Speaker of the*
18 *House of Representatives; and*

19 (iv) *one representative ap-*
20 *pointed by the Minority Leader of*
21 *the House of Representatives.*

22 (2) *APPOINTMENTS.—Appointments to*
23 *the Commission shall be made not later*
24 *than 45 days after the date of the enact-*
25 *ment of this Act. The chairperson shall be*

1 *selected not later than 60 days after the*
2 *date of the enactment of this Act.*

3 (3) *VACANCIES.—Any vacancy in the*
4 *Commission shall not affect its powers,*
5 *but shall be filled in the same manner as*
6 *the original appointment.*

7 (c) *ACCEPTANCE OF GIFTS AND GRANTS.—*
8 *The Commission may accept, use, and dispose*
9 *of gifts or grants of services or property, both*
10 *real and personal, for purposes of aiding or fa-*
11 *cilitating the work of the Commission. Gifts or*
12 *grants not used at the expiration of the Com-*
13 *mission shall be returned to the donor or*
14 *grantor.*

15 (d) *OTHER RESOURCES.—The Commission*
16 *shall have reasonable access to materials, re-*
17 *sources, data, and other information from the*
18 *Department of Justice, the Department of*
19 *Commerce, the Department of State, the De-*
20 *partment of the Treasury, and the Office of the*
21 *United States Trade Representative. The Com-*
22 *mission shall also have reasonable access to*
23 *use the facilities of any such Department or*
24 *Office for purposes of conducting meetings.*

1 (e) *SUNSET.—The Commission shall termi-*
 2 *nate 18 months after the date of the enactment*
 3 *of this Act.*

4 (f) *RULES OF THE COMMISSION.—*

5 (1) *QUORUM.—Nine members of the*
 6 *Commission shall constitute a quorum for*
 7 *conducting the business of the Commis-*
 8 *sion.*

9 (2) *MEETINGS.—Any meetings held by*
 10 *the Commission shall be duly noticed at*
 11 *least 14 days in advance and shall be*
 12 *open to the public.*

13 (3) *OPPORTUNITIES TO TESTIFY.—The*
 14 *Commission shall provide opportunities*
 15 *for representatives of the general public,*
 16 *taxpayer groups, consumer groups, and*
 17 *State and local government officials to*
 18 *testify.*

19 (4) *ADDITIONAL RULES.—The Commis-*
 20 *sion may adopt other rules as needed.*

21 (g) *DUTIES OF THE COMMISSION.—*

22 (1) *IN GENERAL.—The Commission*
 23 *shall conduct a thorough study of Fed-*
 24 *eral, State and local, and international*
 25 *taxation and tariff treatment of trans-*

1 *actions using the Internet and Internet*
2 *access and other comparable interstate or*
3 *international sales activities.*

4 (2) *ISSUES TO BE STUDIED.—The Com-*
5 *mission may include in the study under*
6 *subsection (a)—*

7 (A) *an examination of—*

8 (i) *barriers imposed in foreign*
9 *markets on United States provid-*
10 *ers of property, goods, services, or*
11 *information engaged in electronic*
12 *commerce and on United States*
13 *providers of telecommunications*
14 *services; and*

15 (ii) *how the imposition of such*
16 *barriers will affect United States*
17 *consumers, the competitiveness of*
18 *United States citizens providing*
19 *property, goods, services, or infor-*
20 *mation in foreign markets, and*
21 *the growth and maturing of the*
22 *Internet;*

23 (B) *an examination of the collec-*
24 *tion and administration of consump-*
25 *tion taxes on interstate commerce in*

1 *other countries and the United States,*
2 *and the impact of such collection on*
3 *the global economy, including an ex-*
4 *amination of the relationship between*
5 *the collection and administration of*
6 *such taxes when the transaction uses*
7 *the Internet and when it does not;*

8 (C) *an examination of the impact*
9 *of the Internet and Internet access*
10 *(particularly voice transmission) on*
11 *the revenue base for taxes imposed*
12 *under section 4251 of the Internal*
13 *Revenue Code of 1986;*

14 (D) *an examination of—*

15 (i) *the efforts of State and*
16 *local governments to collect sales*
17 *and use taxes owed on purchases*
18 *from interstate sellers, the advan-*
19 *tages and disadvantages of au-*
20 *thorizing State and local govern-*
21 *ments to require such sellers to*
22 *collect and remit such taxes, par-*
23 *ticularly with respect to electronic*
24 *commerce, and the level of con-*
25 *tacts sufficient to permit a State*

1 *or local government to impose*
2 *such taxes on such interstate com-*
3 *merce;*

4 *(ii) model State legislation re-*
5 *lating to taxation of transactions*
6 *using the Internet and Internet*
7 *access, including uniform termi-*
8 *nology, definitions of the trans-*
9 *actions, services, and other activi-*
10 *ties that may be subject to State*
11 *and local taxation, procedural*
12 *structures and mechanisms appli-*
13 *cable to such taxation, and a*
14 *mechanism for the resolution of*
15 *disputes between States regarding*
16 *matters of multiple taxation; and*

17 *(iii) ways to simplify the inter-*
18 *state administration of sales and*
19 *use taxes on interstate commerce,*
20 *including a review of the need for*
21 *a single or uniform tax registra-*
22 *tion, single or uniform tax re-*
23 *turns, simplified remittance re-*
24 *quirements, simplified adminis-*
25 *trative procedures, or the need for*

1 *an independent third party collec-*
 2 *tion system; and*

3 *(E) the examination of ways to*
 4 *simplify Federal and State and local*
 5 *taxes imposed on the provision of tele-*
 6 *communications services.*

7 *SEC. 103. REPORT.*

8 *Not later than 18 months after the date of*
 9 *the enactment of this Act, the Commission*
 10 *shall transmit to Congress a report reflecting*
 11 *the results of the Commission's study under*
 12 *this title. No finding or recommendation shall*
 13 *be included in the report unless agreed to by*
 14 *at least two-thirds of the members of the Com-*
 15 *mission serving at the time the finding or rec-*
 16 *ommendation is made.*

17 *SEC. 104. DEFINITIONS.*

18 *For the purposes of this title:*

19 *(1) BIT TAX.—The term “bit tax” means*
 20 *any tax on electronic commerce expressly*
 21 *imposed on or measured by the volume of*
 22 *digital information transmitted electroni-*
 23 *cally, or the volume of digital information*
 24 *per unit of time transmitted electroni-*
 25 *cally, but does not include taxes imposed*

1 *on the provision of telecommunications*
2 *services.*

3 (2) *DISCRIMINATORY TAX.—The term*
4 *“discriminatory tax” means any tax im-*
5 *posed by a State or political subdivision*
6 *thereof on electronic commerce that—*

7 (A) *is not generally imposed and*
8 *legally collectible by such State or*
9 *such political subdivision on trans-*
10 *actions involving the same or similar*
11 *property, goods, services, or informa-*
12 *tion accomplished through other*
13 *means;*

14 (B) *is not generally imposed and*
15 *legally collectible at the same rate by*
16 *such State or such political subdivi-*
17 *sion on transactions involving the*
18 *same or similar property, goods, serv-*
19 *ices, or information accomplished*
20 *through other means, unless the rate*
21 *is lower as part of a phase-out of the*
22 *tax over not more than a 5-year pe-*
23 *riod; or*

24 (C) *imposes an obligation to col-*
25 *lect or pay the tax on a different per-*

1 *son or entity than in the case of trans-*
2 *actions involving the same or similar*
3 *property, goods, services, or informa-*
4 *tion accomplished through other*
5 *means.*

6 (3) *ELECTRONIC COMMERCE.*—*The term*
7 *“electronic commerce” means any trans-*
8 *action conducted over the Internet or*
9 *through Internet access, comprising the*
10 *sale, lease, license, offer, or delivery of*
11 *property, goods, services, or information,*
12 *whether or not for consideration, and in-*
13 *cludes the provision of Internet access.*

14 (4) *INTERNET.*—*The term “Internet”*
15 *means the combination of computer facili-*
16 *ties and electromagnetic transmission*
17 *media, and related equipment and soft-*
18 *ware, comprising the interconnected*
19 *worldwide network of computer networks*
20 *that employ the Transmission Control*
21 *Protocol/Internet Protocol, or any prede-*
22 *cessor or successor protocol, to transmit*
23 *information.*

24 (5) *INTERNET ACCESS.*—*The term*
25 *“Internet access” means a service that en-*

1 *ables users to access content, information,*
 2 *electronic mail, or other services offered*
 3 *over the Internet, and may also include*
 4 *access to proprietary content, informa-*
 5 *tion, and other services as part of a pack-*
 6 *age of services offered to consumers. Such*
 7 *term does not include telecommunications*
 8 *services.*

9 (6) *MULTIPLE TAX.—*

10 (A) *IN GENERAL.—The term “mul-*
 11 *tipl**e tax” means any tax that is im-*
 12 *posed by one State or political sub-*
 13 *division thereof on the same or essen-*
 14 *tially the same electronic commerce*
 15 *that is also subject to another tax im-*
 16 *posed by another State or political*
 17 *subdivision thereof (whether or not at*
 18 *the same rate or on the same basis),*
 19 *without a credit (for example, a resale*
 20 *exemption certificate) for taxes paid*
 21 *in other jurisdictions.*

22 (B) *EXCEPTION.—Such term shall*
 23 *not include a sales or use tax imposed*
 24 *by a State and 1 or more political sub-*
 25 *divisions thereof on the same elec-*

1 *tronic commerce or a tax on persons*
 2 *engaged in electronic commerce which*
 3 *also may have been subject to a sales*
 4 *or use tax thereon.*

5 (C) *SALES OR USE TAX.—For pur-*
 6 *poses of subparagraph (B), the term*
 7 *“sales or use tax” means a tax that is*
 8 *imposed on or incident to the sale,*
 9 *purchase, storage, consumption, dis-*
 10 *tribution, or other use of tangible per-*
 11 *sonal property or services as may be*
 12 *defined by laws imposing such tax*
 13 *and which is measured by the amount*
 14 *of the sales price or other charge for*
 15 *such property or service.*

16 (7) *STATE.—The term “State” means*
 17 *any of the several States, the District of*
 18 *Columbia, or any commonwealth, terri-*
 19 *tory, or possession of the United States.*

20 (8) *TAX.—*

21 (A) *IN GENERAL.—The term “tax”*
 22 *means—*

23 (i) *any levy, fee, or charge im-*
 24 *posed under governmental author-*
 25 *ity by any governmental entity; or*

(B) EXCEPTION.—*Such term shall not include any franchise fees or similar fees imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573).*

TITLE II—OTHER PROVISIONS

It is the sense of Congress that no new Federal taxes similar to the taxes described in section 101(a) should be enacted with respect to

1 *the Internet and Internet access during the*
 2 *moratorium provided in such section.*

3 *SEC. 202. NATIONAL TRADE ESTIMATE.*

4 *Section 181 of the Trade Act of 1974 (19*
 5 *U.S.C. 2241) is amended—*

6 *(1) in subsection (a)(1)—*

7 *(A) in subparagraph (A)—*

8 *(i) by striking “and” at the*
 9 *end of clause (i);*

10 *(ii) by inserting “and” at the*
 11 *end of clause (ii); and*

12 *(iii) by inserting after clause*
 13 *(ii) the following new clause:*

14 *“(iii) United States electronic*
 15 *commerce,”; and*

16 *(B) in subparagraph (C)—*

17 *(i) by striking “and” at the*
 18 *end of clause (i);*

19 *(ii) by inserting “and” at the*
 20 *end of clause (ii);*

21 *(iii) by inserting after clause*
 22 *(ii) the following new clause:*

23 *“(iii) the value of additional*
 24 *United States electronic com-*
 25 *merce,”; and*

1 (iv) by inserting “or trans-
2 acted with,” after “or invested in”;

3 (2) in subsection (a)(2)(E)—

4 (A) by striking “and” at the end of
5 clause (i);

6 (B) by inserting “and” at the end
7 of clause (ii); and

8 (C) by inserting after clause (ii)
9 the following new clause:

10 “(iii) the value of electronic
11 commerce transacted with,”; and

12 (3) by adding at the end the following
13 new subsection:

14 “(d) *ELECTRONIC COMMERCE.*—For purposes
15 of this section, the term ‘electronic commerce’
16 has the meaning given that term in section
17 104(3) of the Internet Tax Freedom Act.”.

18 SEC. 203. *DECLARATION THAT THE INTERNET SHOULD BE*
19 *FREE OF FOREIGN TARIFFS, TRADE BAR-*
20 *RIERS, AND OTHER RESTRICTIONS.*

21 (a) *IN GENERAL.*— It is the sense of Con-
22 gress that the President should seek bilateral,
23 regional, and multilateral agreements to re-
24 move barriers to global electronic commerce
25 through the World Trade Organization, the

1 *Organization for Economic Cooperation and*
 2 *Development, the Trans-Atlantic Economic*
 3 *Partnership, the Asia Pacific Economic Co-*
 4 *operation forum, the Free Trade Area of the*
 5 *America, the North American Free Trade*
 6 *Agreement, and other appropriate venues.*

7 (b) *NEGOTIATING OBJECTIVES.—The nego-*
 8 *tiating objectives of the United States shall*
 9 *be—*

10 (1) *to assure that electronic commerce*
 11 *is free from—*

12 (A) *tariff and nontariff barriers;*

13 (B) *burdensome and discrimina-*
 14 *tory regulation and standards; and*

15 (C) *discriminatory taxation; and*

16 (2) *to accelerate the growth of elec-*
 17 *tronic commerce by expanding market ac-*
 18 *cess opportunities for—*

19 (A) *the development of tele-*
 20 *communications infrastructure;*

21 (B) *the procurement of tele-*
 22 *communications equipment;*

23 (C) *the provision of Internet ac-*
 24 *cess and telecommunications services;*
 25 *and*

1 ***(D) the exchange of goods, serv-***
2 ***ices, and digitalized information.***

3 ***(c) ELECTRONIC COMMERCE.—For purposes***
4 ***of this section, the term “electronic commerce”***
5 ***has the meaning given that term in section***
6 ***104(3).***

7 ***SEC. 204. NO EXPANSION OF TAX AUTHORITY.***

8 ***Nothing in this Act shall be construed to***
9 ***expand the duty of any person to collect or pay***
10 ***taxes beyond that which existed immediately***
11 ***before the date of the enactment of this Act.***

12 ***SEC. 205. PRESERVATION OF AUTHORITY.***

13 ***Nothing in this Act shall limit or otherwise***
14 ***affect the implementation of the Telecommuni-***
15 ***cations Act of 1996 (Public Law 104–104) or the***
16 ***amendments made by such Act.***

A

Calendar No. 509

105TH CONGRESS
2D SESSION

S. 442

[Report No. 105-184]
[Report No. 105-276]

A BILL

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

JULY 30, 1998

Reported with an amendment